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Successor Receiver

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE
RIVER ADVISORS, LLC; SRA
MANAGEMENT ASSOCIATES,
LLC; FRANK GREGORY
MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III
LLC; FELIX INVESTMENTS, LLC;
MICHELE J. MAZZOLA; ANNE
BIVONA; CLEAR SAILING
GROUP IV LLC; CLEAR SAILING
GROUP V LLC,

Relief Defendants.

Case No. 3:16-cv-01386-EMC

NINTH INTERIM ADMINISTRATIVE
MOTION FOR AN ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE APPROVAL
OF FEES AND EXPENSES FOR THE
SUCCESEOR RECEIVER, DIAMOND
MCCARTHY LLP, MILLER KAPLAN
ARASE LLP, AND SCHINNER & SHAIN
LLP FROM JANUARY 1, 2021 THROUGH
MARCH 31, 2021

Date: No Hearing Set
Time: No Hearing Set
Judge: Edward M. Chen

1 **I. Relief Requested**

2 Pursuant to Local Rule 7-11, through this Motion, the Receiver seeks approval of
3 compensation and reimbursement of expenses for herself and her professionals for the period of
4 January 1, 2021 through March 31, 2021 (“Motion Period”) in the following amounts:

5 Receiver: Fees \$57,434.00;¹ Costs \$222.18.

6 Diamond McCarthy LLP (“Diamond McCarthy”): Fees \$84,931.00; Costs \$39.59.

7 Miller Kaplan Arase LLP (“Miller Kaplan”): Fees \$6,720.60; Costs \$50.00.

8 Schinner & Shain, LLP (“Schinner”): Fees \$828.00.

9 This Motion is supported by the Declarations of the Receiver, David Castleman of Diamond
10 McCarthy, Julia Damasco of Miller Kaplan, and Frederick Koenen of Schinner.

11 The Receiver has conferred with counsel for the Securities and Exchange Commission
12 (“SEC”), and counsel for Progresso Ventures, and the Receiver is advised that they do not oppose the
13 Motion. A stipulation with all parties was deemed impractical given, among other things, the entry of
14 judgment against defendants and pending bankruptcy of John Bivona. (L.R. 7-11(a)).

15 **II. Previous Fee Motions**

16 Fees and expenses have previously been granted as follows:

17 Order on First Interim Motion (Dkt. 485): Receiver fees of \$46,287.00 and costs of \$3,033.33
18 and Diamond McCarthy fees of \$16,802.80 and costs of \$524.67 (fees subject to 20% hold back).

19 Order on Second Interim Motion (Dkt. No. 515): Receiver fees of \$85,735.50 and costs of
20 \$185.93 and Diamond McCarthy fees of \$30,625.00 and costs of \$1,924.16 (fees subject to 20%
21 hold back).

22 Order on Third Interim Motion (Dkt. No. 537): Receiver fees in the amount of \$40,349.40 and
23 costs of \$542.73 and Diamond McCarthy fees of \$4,450.90 and costs of \$131.35 (fees subject to
24 20% hold back).

25 Order on Fourth Interim Motion (Dkt. No. 567): Receiver fees in the amount of \$50,187.30
26 and costs of \$27.00 and Diamond McCarthy fees of \$12,550.00 (fees subject to 30% holdback);

27

28 ¹ The Receiver has agreed to a holdback of 20% of this amount (\$11,486.80) and therefore requests authority to pay \$45,947.20.

1 Miller Kaplan fees of \$42,465.60 and Schinner fees of \$5,044.96 (fees subject to 20% holdback).

2 Order on the Fifth Interim Motion (Dkt No. 615): Receiver fees in the amount of \$75,058.00
 3 and costs of \$145.00 and Diamond McCarthy fees of \$32,454.00 (fees subject to 20% holdback);
 4 Schinner fees of \$2,450.00 and costs of \$622.06.

5 Order on Sixth Interim Motion (Dkt. No. 621): Receiver fees in the amount of \$43,904.00 and
 6 costs of \$388.39, Diamond McCarthy fees of \$29,398.90 and costs of \$919.78, and Miller Kaplan fees
 7 of \$16,399.20 (subject to 20% holdback); Schinner fees of \$900.

8 Order on Seventh Interim Motion (Dkt. No. 633): Receiver fees in the amount of \$83,732.00
 9 and costs of \$388.39 (fees subject to 20% holdback), Diamond McCarthy fees of \$82,500.50 and costs
 10 of \$508.60, Miller Kaplan fees of \$25,996.40; and Schinner fees of \$11,371.50. The Order further
 11 authorized the payment of the following holdbacks: \$26,511.32 for Diamond McCarthy, \$11,772.96
 12 for Miller Kaplan, and \$3,761.24 for Schinner.

13 Order on Eighth Interim Motion (Dkt. No. 636): Receiver fees in the amount of \$32,571.50
 14 (subject to 20% holdback), Diamond McCarthy fees of \$43,559.20 and costs of \$9.60, and Miller
 15 Kaplan fees of \$3,555.60 and costs of \$99.30.

16 As of March 31, 2021, there are outstanding fee holdbacks from the prior fee applications in
 17 the following amounts:

18 Sherwood Partners, Former Receiver	\$144,627.50
19 Kathy Bazoian Phelps, Receiver	\$96,583.27
20 Total	\$241,210.77

21 As of March 31, 2021, the Receiver was currently holding cash in the following amounts in the
 22 following accounts:

23 Checking	\$6,174.82
24 Brokerage cash sweep	\$44.72
25 Anna Bivona Funds	\$502,445.74
26 Plan Fund checking	\$250,000.00
27 Tax Holding checking	\$250,000.00
28 Palantir Reserve checking	\$250,000.00
Mongo Reserve checking	\$250,000.00
Plan Fund ICS	\$4,265,699.11
Tax Holding ICS	\$32,059,303.67
Palantir Reserve ICS	\$12,877,101.05

1 **III. Case Status**

2 The Court approved the Receiver’s Plan of Distribution (“Plan”) on May 25, 2020 (Dkt.
 3 No. 613). Upon the Plan’s approval, the Receiver began taking the steps necessary to implement
 4 the Plan, including preparing distribution schedules and communicating with investors regarding
 5 their account information. The Receiver worked with Miller Kaplan to address the proper manner
 6 of calculating the sale and distributions of the publicly traded securities. The Receiver filed a
 7 motion seeking Court authority to sell securities to fund the Plan Fund and the Tax Holding
 8 Account and to make interim distributions to investors holding allowed claims. The motion was
 9 approved on July 20, 2020 (Dkt. No. 619), and the Receiver has largely completed the first interim
 10 distributions of publicly traded securities, with just one more investor to receive shares when the
 11 investor provides necessary account information.

12 The Receiver also sought authority to sell the necessary Palantir shares upon notification of
 13 Palantir’s direct listing, and the sales process was completed in early October 2020, resulting in net
 14 proceeds to the Estate of \$9,854,109.90. In November 2020, the Receiver transferred the
 15 remaining \$94,419.56 in the money market account into the checking account. The Receiver
 16 sought authority to make an interim distribution to Class 3 Claimants in the amount of
 17 \$7,721,752.95, which was completed in January 2021.

18 The Receiver also sold or distributed the estate’s remaining position in Palantir after the
 19 lockup restrictions were lifted, resulting in net proceeds of \$44,042,943.99 for the estate (largely to
 20 pay and reserve for taxes), and the distribution or equivalent of nearly 3,000,000 shares of Palantir
 21 to 240 claimants (Dkt. No. 642).

22 The Receiver with the assistance of Diamond McCarthy settled the lawsuit against Ben
 23 Sabrin for the return of 6,250 shares of MongoDB, in exchange for cash payments totaling
 24 \$402,000 (Dkt. No. 646.)

25 As of March 31, 2021, the receivership estate has \$6,174.82 in cash on hand in a checking
 26 account, \$44.72 in the cash sweep of its brokerage account, \$502,445.74 in the segregated Anna
 27 Bivona funds, \$4,515,699.11 in the Plan Fund, \$32,309,303.67 in the Tax Holding Account,
 28 \$13,127,101.05 in the Palantir Administrative Reserve, and \$250,000.00 in the MongoDB

1 Administrative Reserve. There are known accrued expenses and unpaid expenses of \$149,685.37
 2 through March 31, 2021 for fourth quarter fees and expenses, and holdbacks of \$241,210.77.
 3 Attached to the Declaration of the Receiver as Exhibit “1” is a financial summary showing the cash
 4 status of the estate as of March 31, 2021. Funds in the amount of \$73,280.63 representing fourth
 5 quarter 2020 fees and expenses were disbursed during this period. The Standardized Fund
 6 Accounting Report required by the SEC for the first quarter 2021 is attached to the Receiver’s
 7 Declaration as Exhibit “2.”

8 **IV. The Receiver’s Fee Request**

9 As detailed in the Declaration of the Receiver, pursuant to the Receiver’s proposal for her
 10 appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has
 11 established separate billing categories for services provided. For services provided with respect to
 12 legal issues, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby generating
 13 significant savings to the estate. The Receiver has agreed to charge \$130.00 per hour for herself
 14 and her assistants for administrative services. The billing statements itemizing the services
 15 provided and expenses incurred are contained in Exhibit “3” attached to the Declaration of the
 16 Receiver. The Receiver incurred costs of \$222.18 and performed services for each category as
 17 follows:

Matter	Hours	Fees
Case Administration (2598-00011)	15.80	\$6,715.00
Administrative Services (2598-00012)	42.30	\$5,499.00
Asset Analysis and Recovery (2598-00014)	10.50	\$4,462.50
Plan Implementation (2598-00016)	95.90	\$40,757.50
TOTAL	164.50	\$57,434.00

24 **V. Diamond McCarthy’s Fee Request**

25 As detailed in the Declaration of David Castleman, Diamond McCarthy has established
 26 billing categories for tasks performed and has significantly discounted its billing rates with senior
 27 attorneys capping their hourly rate at \$425.00. The billing statements itemizing the services

provided and expenses incurred are attached as Exhibit “4” to the Castleman Declaration. Diamond McCarthy incurred costs of \$39.59 and performed services for each category are as follows:

	Matter	Hours	Fees
3	Case Administration (2622-00011)	13.80	\$5,865.00
4	Plan Implementation (2622-00013)	176.70	\$75,097.50
5	Asset Analysis and Recovery (2622-00015)	9.50	\$3,968.50
6	TOTAL	200.00	\$84,931.00²

VI. Miller Kaplan's Fee Request

As detailed in the Declaration of Julia Damasco and the billing statements attached as Exhibit “5” to her Declaration, Miller Kaplan has incurred \$6,720.60 in fees and \$50.00 in costs in connection with providing tax services to the Receiver. The services performed by Miller Kaplan were necessary in implementing the Plan and in preparing the 2020 taxes for the Qualified Settlement Fund and the 2021 Form 8842.

VII. Schinner's Fee Request

As detailed in the Declaration of Frederick Koenen and the billing statements attached as Exhibit “6” to his Declaration, Schinner has incurred \$828.00 in fees in costs in connection with providing securities law advice to the Receiver. The services performed by Schinner were necessary in implementing the Plan and ensuring delivery of all the estate’s Palantir holdings after the lockup period expired.

WHEREFORE, the Receiver seeks entry of an order granting this Motion in all respects.

Dated: April 19, 2021

By: /s/*Kathy Bazoian Phelps*
Kathy Bazoian Phelps, Receiver

² Due to administrative error, Diamond McCarthy was inadvertently over paid \$40.00 on prior awarded fees. Accordingly, the proposed order discounts the current requested payment to Diamond McCarthy by \$40.00, to \$84,891.00 to adjust for the slight over payment.